Creating the ultimate
living environment

WHANGAREI
DISTRICT COUNCIL

Hearings Commissioner

Notice of Meeting

A meeting of the Hearings Commissioner will be held
in the Whangarei Library, May Bain Room, Whangarei

Thursday
5 August 2010
9.15 am

Application by
Pipiwai Investments Ltd

Part A
Planner's Report and Recommendation

Commissioner

Les Simmons

Vision Statement

To be a vibrant, attractive and thriving District by developing sustainable lifestyles based around our unique environment; the envy of New Zealand and recognised world wide.

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Resource Management Act 1991

Hearing By:	Hearings Commissioner for the Whangarei District Council of a subdivision and landuse consent application by Pipiwai Investments Ltd. The application is considered to be a Non-Complying Activity requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and stone walls. The applicant also seeks consent for cancellation of a right of way easement and extension of time relating to the consent lapsing date.
Evidence By:	Amber Tsang BPlan (Honours) Environmental Planner (Consent) Whangarei District Council
File Ref:	SL0900012 P118318.SL
Dated:	28 June 2010

1. The Proposal

1.1 Pipiwai Investments Ltd seeks subdivision and landuse consent for the following activities in the Countryside Environment:

- To undertake a two-stage subdivision of three existing titles (Lot 2 DP 382892 and Part Maunu 1A Block Parua Survey District, Section 21 Block XV Parua Survey District, and Lot 1 DP 382892 with a combined area of 74.2369ha) creating the following net site areas:

Stage 1	
Lot 1	47.44ha balance lot to be amalgamated with Part Mauna 1A Block (Res CT 331100)
Lots 2 and 3	1.892ha and 15.891ha to be amalgamated creating a total area of 17.783ha
Stage 2	
Lot 1	3320m² road to vest
Lots 5-14, 17-21, 23-48	2000m² minimum net site area residential lots
Lot 16	47.9ha shared ownership allotment with proposed covenanted bush and wetland areas (totalling 11.7ha)

- To remove up to 69m of stone walls including 17m along the Cemetery Road boundary and 52m within the subject site to provide for access.

In addition, the applicant also seeks consent for the following:

- To cancel the Right of Way Easement EI 7225417.3 shown as A in favour of Lot 2 DP 382892 and Part Maunu 1A Block Parua Survey District across Lot 1 on DP 382892 (CT 331099).
- To extend the lapsing date for resource consent so that resource consent lapses on 1 November 2020; being a total of ten years after the date of commencement of consent.

1.2 A copy of the original application lodged with Council on 23 November 2009 is included in **Part B**. The applicant has subsequently amended the proposal to reduce the number of residential allotments sought from 47 to 41 by removing Lots 4, 15, 22, 49, 50 and 51 as originally proposed and including additional covenanted area totalling 11.7ha in size (refer to the letter by Mr Cumming dated 2 July 2010 and the amended concept plan by Beasley & Burgess Surveyors reference C 2478/2 dated 2 July 2010 provided at **Attachment 1** in **Part A**). This amended plan has been circulated to all parties and is the plan informing the proposal being considered at this time.

1.3 Specialist reports submitted in conjunction with the application lodged by Andrew Cumming of Resource Management and Assessment Ltd include:

- Engineering Assessment by Grant Stevens of Richardson Stevens Consultants (1996) Ltd dated 6 May 2009 and supplementary assessment dated 16 February 2010;
- Traffic Effects Assessment by Engineering Outcomes dated 29 August 2008 and supplementary assessment dated 10 February 2010;
- Assessment of Effects on Tangata Whenua by the Toe Toe Otaika Working Group (Hauauru Trust) dated 28 August 2008;
- Archaeological Assessment by Rod Clough of Clough & Associated Ltd dated July 2008 and supplementary assessment dated 18 February 2010;
- Landscape and Visual Impact Assessment by Christine Hawthorn of Hawthorn Landscape Architects dated December 2008; and
- Ecological Assessment by Todd Hamilton of Resource Management and Assessment Ltd dated 29 July 2008.

1.4 The application describes the proposal as a gated farm park development. However, the applicant has not clarified how the on-going mitigation measures proposed are to be enforced and monitored in any comprehensive way. It is suggested a private company will manage assets, but allocation of responsibility for various measures between individual owners, the company, and Council has not been clearly identified.

1.5 Key features of the application are stated as follows:

Ownership and Management

- Proposed Lots 5-14, 17-21 and 23-48 (41 freehold titles) will be owned individually, with each having a share of Lot 16 – the shared ownership parkland - and a share in Newbold Asset Management Limited which is a company set up to own and manage the parkland and Newbold Estate assets, funded by the residents.

- No further subdivision of the shared land for residential purposes would be allowed but buildings may be requested for storage of maintenance equipment or community facilities.

- The Newbold Estate Management Plan which sets out the ongoing management of the development including provisions for monitoring the health and status of various aspects of the property including the protected areas, the enhancement planting and the maintenance status of the walkways and roading will be registered on all the titles.

Built Development and Design Guidelines

- The maximum building height on any of the lots must not exceed 8m.

- The maximum building coverage on any of the proposed 2000m^2 lots must not exceed 35% There shall be a minimum separation distance of 20m between buildings on separate allotments.

- Other restrictions/guidelines on built development include exterior colours, materials, rooflines and fencing.

- Compliance with the restrictions/guidelines will be addressed via a consent notice registered on the titles of the residential allotments.

Landscaping

- Indigenous vegetation will be planted along the steep scarp adjacent to the western boundary, along the eastern and northern boundaries, and around the existing indigenous trees scattered over the property.

- Mixed amenity plantings of predominantly native species and some non-invasive exotic species will be planted around building development areas, along driveways, and adjacent to the existing bush.

- Streetscape planting will be located along the main roadways.

- A detailed landscape planting and maintenance plan will be prepared and implemented.

Bush Protection and Wetland Restoration

- The areas of bush, wetland and riparian margin totalling 11.7ha in size as shown on the concept plan by Beasley & Burgess Surveyors reference C 2478/2 dated 2 July 2010 will be protected and covenanted in perpetuity.

- Stock exclusion from the bush and wetland areas via a consent notice registered on the title of the shared allotment.

- Weed and pest management plan including the requirement for cats and dogs containment and possum control will be prepared and implemented.

Roading and Access

- All the proposed lots will gain vehicle access off Cemetery Road via a 3320m^2 proposed road to vest and internal driveways.

- A dashed yellow “no-parking” line will be marked on the southern side of SH14 for 100m to the northeast of Cemetery Road.

- Chevron sign boards on several bends along Cemetery Road between the site and SH14 will be installed.

- A slip lane will be constructed on the eastern side of Cemetery Road north of the proposed road to vest.
- Internal walkway and cycling tracks will be provided within the property and managed by the company**.**

Services

- The proposed allotments will be connected to Council's reticulation in terms of water supply.
- Onsite treatment and disposal of wastewater will be designed by a suitably qualified person and will be able to comply with standards of the Regional Water and Soil Plan.
- Stormwater management for the whole development will be integrated using 4 proposed ponds to provide attenuation and treatment.

Earthworks

- Consent was granted by the Northland Regional Council on 24 November 2009 for the following (copy of the consent is included in **Part C**):
  - To dam an unnamed tributary for the purpose of creating a wetland.
  - To place and use a dam on the bed of an unnamed tributary
  - To carry out earthworks on the bed of the water course.
  - To divert water during and after earthworks.
  - To discharge water to land and to water during earthworks.
- Any future earthworks will be carried out within the permitted activity standards of the Regional Water and Soil Plan, in accordance with Auckland Regional Council TP90, best industry practice and conditions of the NRC consent.
- Any earthworks within the Notable Landscape Area will need to meet the permitted activity standards of the Whangarei District Plan or seek resource consent.

1.6 Council's Senior Environmental Engineering Officer, Dean Murphy, Council's Consultant Landscape Architect, Simon Cocker, and Council's Consultant Ecologist, David Wright, have assessed the application and the specialist reports (and the relevant information and submissions received after notification). Copies of their assessments are provided at **Attachment 2** in Part A. Their comments have been incorporated into the assessment and the relevant sections of this report.

1.7 Mr Murphy, Mr Cocker and Mr Wright have each recommended conditions of consent to address various aspects. Their recommended conditions have been incorporated into a full list of recommended conditions provided at **Attachment 3** in Part A.

2. The Site and the Surroundings

2.1 The proposed development is located on the south-eastern side of Cemetery Road in Maunu and involves 3 existing certificates of title. The allotment areas and legal descriptions are as follows:

i. 55.2420ha contained within Lot 2 DP 382892 and Part Maunu 1A Block Parua Survey District
ii. 1.1730ha contained within Section 21 Block XV Parua Survey District
iii. 17.8219ha contained within Lot 1 DP 382892

2.2 Lot 1 DP 382892 is currently owned by EI Brown, ND Tunzelmann and AB Gunson and is referred to in the application as the Gunson property. As stated in the application, the proposal involves the Gunson property only to provide access to Cemetery Road by creating a road to vest in the property. Specifically, there will be a boundary adjustment between the Gunson property and the property owned by Pipiwai Investments Ltd.

2.3 The farm park development will be contained within Lot 2 DP 382892 and Part Maunu 1A Block Parua Survey District, and Section 21 Block XV Parua Survey District with a combined area of 56.4150ha, which is owned by Pipiwai Investments Ltd and is referred to in the application as the PIL property. For the purpose of this report, I refer to the PIL property as the subject site.

2.4 Detailed description of the subject site has been provided in various specialist reports submitted in conjunction with the application. The key characteristics of the site are considered to be as follows:

- The site is located on a shallow valley between two ridges along the western and eastern boundaries and consists of rolling to steep topography.
- The site is currently vacant of built development and is used for the grazing of stock.
- The site contains three distinct bush remnants as illustrated in Appendix 3 of Ms Hawthorn's assessment (refer to Attachment 12 of the application):
  - Bush remnant 1 is approximately 1.9ha in size as shown on the subdivision scheme plan by Beasley & Burgess Surveyors dated 05 Feb 2010 def: C 2478/2. It is located on the north-western corner of the site and is within a Protected Natural Areas ref: Q07056 as identified by the Department of Conservation.
  - Bush remnant 2 is approximately 2ha in size as shown on the subdivision schemed plan. It is located on the south-western portion of the site and is within a Protected Natural Areas ref: Q07023 and a Notable Landscape Area under the District plan.
  - Bush remnant 3 is approximately 0.3ha in size as shown on the subdivision scheme plan and is located near the eastern corner of the site.
- There are also a mix of scattered individual trees and small clusters of mature indigenous trees within the site.
- There are several water courses and wetland areas within the site as illustrated in Appendix 3 of Ms Hawthorn's assessment.
- The soil types of the site do not meet the criteria for highly versatile soils and are classed as IV and VI in terms of land use capability as shown on Council's GIS system.
- There are several recorded archaeological sites ref: Q07/374, Q37/412, Q07/375 and Q07/377 in proximity of the site.
- The site is located immediately to the south of the Whangarei Cemetery on Cemetery Road and to the north-west of a Site of Significant to Maori ref: 14 under the District Plan being Maori Reserve (Wahi tapu).

2.5 The site is located within the Countryside Environment – a general rural zone which tends to be used predominantly for primary production, but is also used for low-density residential purposes (as described in Chapter 5.2 of the District Plan). The south-western portion of the site is located within the Notable Landscape Area. A location map and an aerial photo showing the locality of the site and the Gunson property are provided at **Attachment 4** in Part A; GIS maps showing zoning and other resource area notations of the properties in the area are provided at **Attachment 5** in Part A.

2.6 All surrounding properties on Cemetery Road are within the Countryside Environment. However, the surrounding area is characterised by different allotment sizes and densities of built development (refer to the density map provided at **Attachment 6** in Part A).

3. District Plan Requirements

3.1 The site is located within the Countryside Environment of the District Plan and the south-western portion of the site is located within the Notable Landscape Area.

3.2 Rule 73.3.1 Allotment Area specifies that subdivision in the Countryside Environment is a controlled activity where every proposed allotment has a minimum net site area of 20ha and a discretionary activity where the minimum average net site area is 4ha. Where these standards are not met, subdivision is a non-complying activity.

3.3 The proposal seeks to undertake subdivision to create 41 residential allotments with a minimum net site area of 2000m², one 47.9ha shared ownership allotment with proposed covenanted bush areas, and one road to vest of 3320m² in size. Hence the proposal does not meet the minimum net site area standard for a controlled activity. The minimum average net site area of the proposed allotments is approximately 3857m² (net site area of proposed Lot 16 – the shared ownership allotment being 47.9ha is deemed 8ha as required by Rule 73.3.1), hence the proposal does not meet the standard for a discretionary activity and is a non-complying activity.

3.4 Rule 73.3.13 Stone Walls states that subdivision in the Countryside Environment is a controlled activity if the removal of stone walls is to provide access, where no other access is available, and the maximum length of wall to be removed is 6m. On the other hand, Rule 38.3.8 Stone Walls states that removal of stone walls is a permitted activity if the removal is to provide access, where no other access is available, and the maximum length of wall to be removed is 6m.

3.5 The proposal seeks to remove up to 69m of stone walls including 17m along the Cemetery Road boundary and 52m within the subject site to provide for access. Hence the proposal does not comply with either Rule 73.3.13 or Rule 38.3.8 and is a restricted discretionary activity, with Council's discretion restricted to:

- Effects on heritage values;
- Effects on landscape values;
- Visual effects;
- Alternative to removal of the stone wall;
- The matters over which control is reserved;
  - Effects of demolition of a stone wall on the integrity of the remaining stone walls;
  - The additional matters listed in Chapter 70.3;
- The heritage and amenity values of the stone walls;

- Alternative location of allotment boundaries; and
- The additional matters listed in Chapter 2.3.3.

3.6 It is stated in Section 7 of the application that the proposal complies with all other relevant rules of the Countryside Environment and the Notable Landscape Area as a controlled or permitted activity, including property access, road formation, extension of services, earthworks and indigenous vegetation clearance.

3.7 Overall, the application is considered to be a **Non-Complying Activity** requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and stone walls.

4. Consultation, Public Notification and Submissions Received

4.1 It is stated in Section 25 of the application that the following affected parties have been consulted and have provided their written approval in support of the proposal:

- Toe Toe Otaika Working Group (Hauauru Trust)
- EI Brown, ND Tunzelmann and AB Gunson (owners of the Gunson property)

4.2 The application was suspended on 27 January 2010 with information regarding traffic effects, subdivision plan, stonewalls, water demand, forest and wetland protection, precedent effects and extension of time requested pursuant to Section 92 of the Act. The requested information was received on 19 February 2010 and is included in **Part C**.

4.3 The application was lodged after 1 October 2009. Hence, the Resource Management (Simplifying and Streamlining) Amendment Act 2009 applies. On 4 March 2010, it was determined pursuant to Section 95A(2)(b) of the Act that the application be publicly notified as the applicant requested public notification of the application.

4.4 The application was publicly notified in the Whangarei Leader on 9 March 2010 with the submission period closing on 8 April 2010. During this period, the application attracted 15 submissions with 7 opposing the application, 4 supporting the application, 3 neutral submissions and 1 withdrawn submission (by the New Zealand Historic Places Trust). 4 submitters have indicated that they wish to be heard, being all in opposition. Copies of the submissions received are included in **Part C**.

4.5 An individual summary of the submissions and a map which shows the location of the submitters with respect to the subject site is provided at **Attachment 7** in Part A. In summary the submitters have raised the following matters which require consideration:

- Enhancement of the area and suitable use of the land;
- Built development and planting on the common boundary;
- Intensification and fragmentation within the Countryside Environment;
- Pressure on infrastructure;
- Traffic safety and efficiency;
- Air and noise pollution;
- Effects on Maori and archaeological values;
- Effects on property values;

- Maintenance and protection of transmission line assets and sub-transmission circuits;
- Promotion of the application in the form of a private plan change;
- Financial sustainability and management of the farm park;
- Consistency with the District Plan, Plan Change 93, Maunu and Hora Hora Structure Plan and Part 2 of the Act; and
- Precedent effect and District Plan integrity.

4.6 In terms of the effects on property values, there have been several Court decisions which have directed that this is a matter which falls outside the scope of the Resource Management Act 1991. Where there is evidence of adverse effects on property values this should not be considered as a separate adverse effect over and above effects on amenity as this would lead to a 'double weighting' of the effects on amenity where a reduction in property values is a consequence of effects upon amenity values. It is also noted that although the economic effects of the proposal have to be considered, it is only to the extent that it affects the community at large, not the effects on the expectations of individual property owners or investors. The other matters raised in the submissions are addressed in the relevant sections of this report.

4.7 Following the receipt of submissions the applicant has undertaken discussions and meetings with Council's staff and liaised with several submitters. Further information has been received and is included at **Attachment 8** in Part A:

- Written approval from JA Hawken (owners of Lot 2 DP 85459)
- Meeting minute of 28 April 2008 – discussion regarding ecology and landscape matters (which results in further comments provided by Mr Cocker and Mr Wright as included at Attachment 1 in Part A)
- A letter by Mr Cumming dated 17 May 2010 – agreement between the applicant and the New Zealand Historic Places Trust (HPT)
- An email by Tony Pickard of HPT dated 9 June 2010 – withdrawn submission in opposition
- An email by Mr Cumming dated 9 June 2010 – comments regarding recommendation by Hauauru Turst
- An email by Sarah Brownie of Northpower Limited dated 30 June 2010 – withdrawn submission in opposition

5. Statutory Context

5.1 Section 104 of the Resource Management Act 1991 sets out those matters that, subject to Part 2, the Consent Authority must have regard to when considering an application for resource consent. These matters include any actual or potential effects on the environment of allowing the activity, any relevant provisions of a plan or proposed plan, and any other matter the Consent Authority considers relevant and reasonably necessary to determine the application.

5.2 Pursuant to Section 104B of the Act, after considering a non-complying resource consent application, the Consent Authority may grant or refuse the application, and if it grants the application, may impose conditions under Section 108 of the Act.

5.3 Pursuant to Section 104D of the Act, the Consent Authority may grant a non-complying activity resource consent application only if it is satisfied that either the adverse effects of the activity on the environment will be minor, or the activity will not be contrary to the objectives and policies of the relevant plan or proposed plan.

5.4 Pursuant to Section 123 of the Act, the period for which any other resource consent is granted is the period (not exceeding 35 years from the dated of granting) specified in the consent and, if no such period is specified, is 5 years from the date of commencement of the consent under Section 116 of the Act, except as provided in Section 125 of the Act.

5.5 Pursuant to Section 243(a) of the Act, no easement shall be surrendered by the owner of the dominant tenement except with the written consent of the territorial authority.

5.6 The following sections of this report address those matters considered relevant to this application, including an assessment of environmental effects, an analysis of the proposal against the relevant provisions of a plan or proposed plan, and consideration of any other relevant matters, in order to reach a conclusion and recommendation as to whether the application should be granted or declined pursuant to Sections 104, 104B and 104D of the Act.

6. Assessment of Environmental Effects

6.1 As detailed above, as a non-complying activity the consent may only be granted if at least one of two 'gateway' tests set out in Section 104D of the Act is satisfied: either that the adverse effects of the proposal on the environment will be minor; or the proposal will not be contrary to the objectives or policies of the relevant plans.

6.2 Section 3 of the Act defines the term effect as including –

(a) Any positive or adverse effect; and

(b) Any temporary or permanent effect: and

(c) Any past, present or future effect: and

(d) Any cumulative effect which arises over time or in conjunction with other effects –

regardless of scale, intensity, duration or frequency of the effect, and also includes –

(e) Any potential effect of high probability; and

(f) Any potential effect of low probability which has a high potential impact.

6.3 Section 104(3) of the Act requires the Consent Authority to disregard any effects on a person who has given written approval to the application. The following persons have given their written approval to the application:

6.3.1 Toe Toe Otaika Working Group (Hauauru Trust)
6.3.2 EI Brown, ND Tunzelmann and AB Gunson (owners of the Gunson property)
6.3.3 JA Hawken (owners of Lot 2 DP 85459)

The Permitted Baseline

6.4 When considering any actual and potential effects of the proposed activity, Section 104(2) of the Act provides that Council may have regard to permitted baseline comparisons i.e. a comparison with the environment as it would exist if the land were used in a manner permitted as of right.

6.5 The permitted baseline approach to effects assessment enables Council to disregard any adverse effects on the environment if those effects are related to an activity or activities permitted by the District Plan. Existing activities and any activity which could be carried out as a permitted activity without being fanciful may be discounted as giving rise to any adverse effects.

6.6 In this case, no subdivision is permitted by the District Plan. The construction of residential units is a permitted activity subject to density and bulk and location requirements. In addition, commercial or industrial activities with a gross floor area of less than 500m^2 being located more than 100 metres from an existing residential unit on a separate site or an Open Space Environment may be permitted subject to not exceeding 30 traffic movements in any 24 hour period. Residential activities are exempt from traffic movement restrictions.

In this Environment, the construction of a residential unit or a minor residential unit could be considered as a permitted activity if:

a) The residential unit, after completion, will be the only residential unit on the site; or

b) The residential unit will be an additional residential unit on the site; and there is at least 20ha of net site area associated with each residential unit; and

c) The minor residential unit, after completion, will be the only minor residential unit on the site and the minimum net site area of the allotment is 8000m^2; and

d) It is not within a Mineral Extraction Area as shown on the Planning Maps; and

e) It is not within 500m of a Mineral Extraction Area.

Note: A minor residential unit, as defined in Chapter 4 of the District Plan, means a residential unit located no more than 15m from another residential unit on the same site/ lot with a gross floor area of no more than 70m^2, excluding the gross floor area used exclusively for the storage of motor vehicles in associated with the minor residential dwelling.

6.7 With the existing allotments (Lot 2 DP 382892 and Part Maunu 1A Block Parua Survey District, and Section 21 Block XV Parua Survey District) having a combined area of 56.4150ha, only two residential units and one minor residential unit could theoretically be permitted as of right on the subject site, without a resource consent provided that all other bulk and location requirements of the Plan were complied with.

6.8 As a controlled activity subdivision a proposal to subdivide the subject site into allotments with a minimum net site area of 20ha would result in two allotments each with potential for a residential unit and a minor residential unit.

6.9 The removal of stone walls is permitted by the District Plan under Rule 38.3.8 Stone Walls if the removal is to provide access, where no other access is available, and the maximum length of wall to be removed is 6m.

Traffic Safety and Efficiency

6.10 All the proposed lots will gain vehicle access off Cemetery Road via a 3320m² proposed road to vest and the internal driveways within the site. The proposed road to vest is located on the eastern side of Cemetery Road approximately 1.5km south of the intersection of Cemetery Road and State Highway 14 (SH14).

6.11 Council's Senior Environmental Engineering Officer, Mr Murphy, has commented on the roads and the speed environments in the area and confirmed that the new intersection of the proposed road to vest and Cemetery Road can achieve complying sight lines (refer to Mr Murphy's report dated 22 June 2010 provided at Attachment 1 of Part A).

6.12 A Traffic Effects Assessment by Engineering Outcomes dated 29 August 2008 and supplementary assessment dated 10 February 2010 have been provided in support of the application. Engineering Outcomes have provided comments in their report with regard to traffic generation, traffic origins and destinations, traffic on exiting roads and crashes. In particular, it is anticipated that at full development of the proposal, traffic on Cemetery Road will be increased by as much as 450[1] vehicles per day.

6.13 It is concluded by Engineering Outcomes that the traffic effects relating to the proposal are no more than minor with the following proposed mitigation measures:

- A dashed yellow "no-parking" line will be marked on the southern side of SH14 for 100m to the northeast of Cemetery Road.
- Chevron sign boards on several bends along Cemetery Road between the site and SH14 will be installed.
- A slip lane will be constructed on the eastern side of Cemetery Road north of the proposed road to vest.

6.14 Mr Murphy concurs with the conclusion reached by Engineering Outcomes.

6.15 Several submitters have raised concerns regarding traffic congestion on Cemetery Road and at the intersection of Cemetery Road and SH14. However, Mr Murphy has concluded that Cemetery Road is capable of safely and efficiently accommodating the traffic volumes on the road at present and that would be present at full development of the proposal. Mr Murphy has advised that the proposal may have some effect on traffic flows/delays at the intersection of Cemetery Road and SH14but the extent of such effects has not been determined. It is noted that the New Zealand Transport Agency, in their submission, has not raised concerns regarding this matter.

Several submitters have raised concerns regarding the absence of footpath along Cemetery Road. However, Council's Roading Manager, Jeff Devine, has advised that there is currently no policy for footpaths in the Countryside Environment and the provision of a footpath does not form part of the application.

6.16 Based on the comments provided by Engineering Outcomes and Mr Murphy and the mitigation measures proposed, it is considered that the effects on traffic safety and efficiency are no more than minor.

[1] This figure has not been revised since the amended application was received dated 2nd July 2010.

Landscape and Visual Effects

6.17 A Landscape and Visual Impact Assessment by Christine Hawthorn of Hawthorn Landscape Architects dated December 2008 has been provided in support of the application. Council's Consultant Landscape Architect, Mr Cocker, has reviewed the application and the assessment by Ms Hawthorn.

6.18 In terms of landscape character, the Whangarei District Council Landscape Assessment by LA4 in 1995 (WDCLA 1995) identifies, describes and rates different landscape units within the district and is referred to in both Ms Hawthorn's and Mr Cocker's assessment. The document identifies and describes the units on the basis of landscape character and the main visual and physical characteristics. The document also rates the units based on its visual absorption capability and its vulnerability to change, scaled from 1 to 7; with rating 7 being more sensitive and rating 1 being less sensitive.

6.19 The WDCLA 1995 identifies the site as being located within Unit T13 – Matarau/Maungatapere area which is accommodated within the Heritage Landscape category and has a sensitivity rating of 5. The key characters of Unit T13 include:

- A strong signature of a cultural heritage with a range of elements contributing to the sense of history conveyed by the landscape of the area.
- Extensive drystone walls are a recurring element.
- The balance of clumps of indigenous forest scattered through a landscape which is so overtly cultural is a fascinating interplay which heightens the values of the unit.
- The majority of the land is occupied by pastoral farming, although horticultural uses are becoming increasingly prevalent.

6.20 In regard to more recent development in the area and its impact on the landscape character the WDCLA 1995 notes:

> *The unit is not without more recent development, but most of the modern houses are set well back from the road and generally well screened. Inevitably the most visible modern homes tend to detract from the heritage character of the unit.*
>
> *Recent subdivision for lifestyle block, most noticeably in the Maunu area, is a trend which will inevitably erode the historic theme of the units, particularly when development includes prominently sited homes and/or strong boundary delineation with shelterbelts.*

6.21 Furthermore, Mr Cocker has provided the following comments with regard to the differences between the landscape character of the site and the landscape character of the subdivisions to the east and south-east of the site – the subdivisions within the Pompallier Estates, West Ridge and Maunu Estate developments:

> *The LVA (Ms Hawthorn's assessment) describes in some detail the character of subdivision to the east and south east – within the Pompallier Estates, West Ridge and Maunu Estate developments. However, whilst these subdivisions are adjacent to land unit T13, the character of the landscape in which they are situated differs from that of the subject site – particularly with regard the heritage character of the landscape. As such, they are identified by the Landscape Assessment as being located in a separate land unit.*
>
> *...*

In summary, the site is not considered to be part of or contiguous with the landscape to the east and south east, which is characterised by rural residential development. The site is more associated with the surrounding heritage and horticultural character landscape.

Importantly, the openness and lack of built development of the upper parts of the site is a key character of these more visible and sensitive areas.

6.22 In summary, Ms Hawthorn considers that the site and the surrounding area *is obviously a culturally modified landscape with the natural character having been modified over a long period to its present state, and continuing to be modified through land use practices and subdivision developments*. On the other hand, Mr Cocker considers that the site has a horticultural, vegetated and heritage character which also displays a rural and natural character.

6.23 Both Ms Hawthorn and Mr Cocker have commented on the visibility and the potential viewing audience of the site and agree that the site is reasonably contained in terms of visibility. In particular, Mr Cocker has provided a summary of the potential viewing audience of the proposed allotments in groups (refer to Mr Cocker's correspondence dated 21 June 2010 provided at Attachment 1 in Part A).

6.24 Section 6 of Ms Hawthorn's assessment detailed the proposed enhancement and mitigation measures which include landscape enhancement plantings, bush & wetland protection, heritage protection, architectural design guidelines and proposed conditions of consent. It is concluded by Ms Hawthorn that:

The overall potential adverse landscape and visual effects of this development upon the public viewing audience is considered to be no more than minor due to the visual containment of the site, the protection and enhancement measures proposed, and the location of the development adjacent to a growing rural residential area.

6.25 While Mr Cocker agrees that the landscape and visual effects can be avoided or mitigated, he considers that '*there is a wide gap in detail and likely effectiveness (in terms of mitigation outcomes) between the conceptual landscape plan submitted, and the final plans that will result from the conditions of consent.'* Mr Cocker, therefore, has recommended a list of objectives which describe the main elements of the mitigation planting required and can be used as criteria by Council to assess the final landscape plan submitted for approval (refer to Mr Cocker's correspondence dated 27 May 2010 provided at Attachment 1 in Part A).

6.26 In particular, Mr Cocker has recommended the following objective to address the concern raised by Mr Jochems (submitter) regarding planting along the common boundary of his property and the site (the eastern boundary of the site):

That plantings along the eastern boundary, provided for the purpose of mitigating any effects generated by Lots 24-30 shall comprise a graded profile, with lower species adjacent to the boundary fence through to taller tree species. This approach is for the purpose of satisfying the neighbouring property owner who has expressed a wish that tree species are not planted on the shared boundary.

6.27 With regard to the proposed maximum building coverage on the proposed allotments being 35% of the net site area (i.e. 35% of 2000m² = 700m²), Mr Cocker has provided the following comments:

I recommended that the Lot 18-23 group be restricted to the Living 3 permitted standard since I was of the opinion that the adverse effects resulting from such development would be difficult to mitigate. With regard to the other lot groups, it is anticipated that development within these would not be visible from external viewpoints, or could be mitigated in time using building design guidelines, by specifying building sites and by planting.

6.28 The maximum building coverage permitted by the District Plan is 500m² or 5% of the net site area (whichever is bigger) in the Countryside Environment, 25% of the net site area in the Living 3 Environment and 35% of the net site area in the Living 1 Environment. It is unclear whether the applicant seeks land use consent to dispense with the maximum building coverage requirement of the Countryside Environment for future residential units and buildings on the proposed allotments, however, this matter has formed part of Mr Cocker's assessment.

6.29 It is concluded by Mr Cocker that:

In summary, I am of the opinion that the majority of the proposal – being the Lots 31-51 grouping – will avoid adverse effects with regard to external viewers, whilst the effects resulting from the other groupings can be mitigated through building design controls, building location controls and mitigation planting to a level that is no more than minor. This conclusion assumed that the objectives set out above, and in my previous letter dated 27th May 2010 are implemented and that mitigation planting is permitted to become establish and is maintained and allowed to remain intact in perpetuity. Legal protection of the mitigation plantings is, therefore recommended.

6.30 Until such time as the mitigation plantings are fully established (i.e. five to ten years), Mr Cocker considers that the level of visual effects on the external viewers to the north-east, east and south-east of the site, and the Huys property (adjoining to the north-western corner of the site) would be more than minor. However, this is based on the assumption that the site or individual portions of the site are developed to the maximum potential immediately with construction occurring prior to the planting being fully established.

6.31 Mr Cocker has recommended that *'mitigation planting proposed or required for the purposes of mitigating adverse effects from external viewpoints should be implemented prior to 224(c) being issued. This includes mitigation plantings associated with lots 24-30 and structural mitigation plantings associated with Lots - 4, 8, 9, 10, 11 and 12, and Lots 18-23. Mitigation plantings also include planting proposed for the purpose of screening views from the Huys property.'*

6.32 In reviewing the amended application dated 2nd July 2010, Mr Cocker confirms his previous assessment and comments, noting that with the reduction in lots the visual effects will be further reduced.

Rural Character and Amenity Values

6.33 Section 2 of the Act defines the term **amenity values** as –

Those natural or physical qualities and characteristics of an area that contribute to ones appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes

6.34 Typically a person would view amenity to be matters such as pleasantness, privacy, quietness and clean air. Therefore, on top of visual impact, matters such as noise, dust, light spill, volume of traffic and intensity of development influence amenity values. People's perception, expectation, desires, and tolerance also influence amenity values.

6.35 In particular, the following has been identified in Chapter 5 Amenity Values of the District Plan as the key characters contributing to the amenity values of the Countryside Environment: (Comments following each bullet point are those of the reporting officer)

- *The intermittent nature of most agricultural activities;*
  The site and immediately adjoining properties to the south and east reflect agricultural activities. It is acknowledged that the wider environment of Cemetery Road reflects an increasingly intermittent nature of rural activities given the intensity of subdivision and resulting development.

- *Open landscapes and views;*
  The existing landscape and views have been considered by both Mr Cocker and Ms Hawthorn.

- *A low intensity of development;*
  The site is currently used for rural purposes, and generally exhibits the character of a low intensity rural area. Built development is not readily evident in the immediate vicinity, although it is acknowledged that Cemetery Road does have a fairly intensive subdivision and built development pattern that would not be considered as low intensity.

- *Feelings of remoteness and community;*
  When viewing the subdivision site, there is some sense of remoteness from other development in the area, particularly when looking across to the east and south. This is largely due to the topography and containment of the site and the separation from Cemetery Road.

- *Low noise levels, particularly at night;*
  The site currently would not be considered to experience noise levels beyond that expected in a rural area.

- *A high degree of privacy;*
  Given the topography and containment of the site, it does experience a relatively high degree of privacy.

- *Daylight and sunlight access;*
  Daylight and sunlight access are relatively unrestricted.

- *Low levels of vehicular traffic;*
  Existing traffic flows on Cemetery Road have been assessed. It is considered that the traffic flows reflect the relatively high intensity of rural and rural residential development within the wider area.

- *Green 'unspoiled' landscape with indigenous vegetation.*
  The existing landscape and views have been considered by both Mr Cocker and Ms Hawthorn. There is some indigenous vegetation on the site, notably the stands of bush on the peripheries of the southwestern and northern boundaries.

6.36 Section 9 of the application included an assessment and a comparison of amenity level between the existing receiving environment and the anticipated change as a result of the proposal. A list of matters which influence amenity values has been included in the assessment. However, it is unclear whether the assessment has taken into account the offsite amenity effects.

6.37 The following are some of the matters included in the assessment and the anticipated level of change as concluded by Mr Cumming:

- Noise – no change
- Vehicular traffic – slightly lower amenity
- Intensity of development – slightly lower amenity
- Safe environment for children, cyclists and pedestrians – increased amenity
- Open Landscapes and views – increased amenity
- Green 'unspoiled' landscape with indigenous vegetation – increased amenity
- Glare, light spill – reduced amenity
- Dust – no change

6.38 In summary, it is considered by Mr Cumming that:

- *The proposal results in a net increase in amenity values of the area and safeguards those values in perpetuity through the creation of protected areas.*
- *The proposal does not unduly compromise rural land uses in the area because the rural use is already evolving into smallholdings and rural residential development.*
- *The proposal is compatible with the existing pattern of development of the Maunu urban fringe, which feature smallholdings, rural residential and residential development.*
- *The proposal is consistent with the level of amenity in the surrounding environment.*

6.39 I consider the following to be relevant in relation to the effects on amenity.

6.40 The positive amenity effects generated by landscape planting, bush protection, wetland development, and walk and cycle tracks are generally available for the enjoyment of the potential owners of the proposed allotments given that it is to be a gated environment. This needs to be balanced against the offsite effects on amenity, the majority of which relates to the significant increase in traffic on Cemetery Road. On this basis, I disagree that the proposal would result in a net increase in amenity values for the wider community.

6.41 It is accepted that the rural character which contributes to the amenity values of the wider Cemetery Road area has been modified with the introduction of lifestyle blocks and the creation of some smaller rural residential allotments. The character of the area to the north-west and north-east of the site – the properties located along the frontage of Cemetery Road and Austin Road, and the area to the east and south-east of the site – the properties located along West Ridge Road and Maunu Estate Drive (a private road) are considered rural-residential, with the majority of the allotment sizes ranging from 1 to 4ha.

It is noted that the majority of these properties including those located along West Ridge Road and Maunu Estate Drive were created prior to 2006 under a more permissive allotment area requirement of the District Plan. Prior to 2001, the District Plan included a controlled activity in regard to allotment area having a minimum area of 1 ha in the Countryside Environment. The requirement was subsequently amended to require a minimum allotment area of 4ha in 2001, and amended again to require a minimum allotment area of 20ha in February 2006.

6.42 The site does not have frontage to Cemetery Road and is not surrounded by properties with allotment sizes and densities of built development similar to those within the more rural-residential areas described above. On the contrary, the site is bounded by medium to large sized rural holdings to the southeast being 113.7028ha (Pt Section 14 BLK XV Purua SD), to the southwest being 26.1524ha (Mauna MBLK 2D2), to the northwest being 17.8231ha (the Gunson property), and to northeast being 22.8673ha (the Cemetery), 18.0284ha (Lot 2 DP 85459) and 5.966ha (Lot 3 DP 100495). I consider the site and the immediate surroundings to be characterised by a more rural character.

On this basis, I consider that the site and the properties adjacent to it as described previously are characterised by rural features such as low intensity of development, low noise levels particularly at night, low levels of vehicular traffic and green 'unspoiled' landscape with indigenous vegetation. These features contribute to the amenity values currently enjoyed by the properties surrounding the site and in the area. The proposed intensity of development is not compatible with this existing environment. Approval of the proposed subdivision to allow more intensive development on the site would lead to further intensification and fragmentation in the Countryside Environment. The offsite effects due to this intensification would be evident mainly through the traffic volume increase on Cemetery Road, noting that the extent of the development itself would be largely unseen.

6.43 Several submitters have raised concerns regarding the intensity of the development proposed. More specifically, they relate to the increased level of traffic movements, noise, and air pollution especially during construction associated with the number of residential allotments proposed.

6.44 The applicant has not proposed any specific mitigation measures to address the offsite amenity effects in terms of the volume of traffic associated with the intensity of development proposed and it would appear it is not the type of effect that could be easily avoided, remedied, or mitigated without considering the intensity proposed. While several mitigation measures have been proposed to address the traffic effects (refer to paragraph 7.12 of this report), it is arguable if these measures could address the effects on amenity. In particular, it is anticipated by Engineering Outcomes that at full development of the proposal, traffic on Cemetery Road will be increased by as much as 450 vehicles per day.

6.45 I therefore consider that the potential adverse effects of the proposed subdivision with regard to rural character and amenity values are more than minor due to the intensity of development proposed, and the resulting offsite amenity effects in terms of noise and volume of traffic associated with the 41 additional residential allotments in a rural area.

Ecological Effects

6.46 An Ecological Assessment by Todd Hamilton of Resource Management and Assessment Ltd dated 29 July 2008 has been provided in support of the application. Council's Consultant Ecologist, Mr Wright, has reviewed the application and the assessment by Mr Hamilton.

6.47 Mr Hamilton has provided a detailed description and ecological assessment of the three bush/forest remnants (as described in paragraph 2.4 of this report) and the wetland and riparian area within the site. In summary, it is concluded by Mr Hamilton that:

- Both forest remnants 1 and 2 are of high value for protection in terms of the criteria of the Northland Protection Strategy.
- Forest remnant 1 is of outstanding value and bush remnant 2 is of high value in terms of the criteria under Schedule 17D of the District Plan.
- Forest remnant 3 is in poor condition. However, the remnant would recover well and contribute to the ecological values of the property with stock exclusion, pest control and enhancement planting.
- The wetland and riparian area has been significantly degraded by stock grazing and the introduction of exotic plant species. This area is proposed to be restored through stock exclusion and appropriate indigenous revegetation plantings.

6.48 Mr Hamilton has also provided assessment in terms of the potential negative effects of the proposed building areas, roading, earthworks, stormwater, household effluent, cats and dogs, and plant pests would have on the ecological values of the bush remnants and the wetland and riparian area, and recommended the following mitigation measures:

- *Exclusion of stock from the forest, wetland areas and waterways supported legally by means of a consent notice on the title of the shared allotment.*
- *Preparation and implementation of a weed and pest management plan including:*
  - *Ongoing plant pest control – removal of invasive weeds and ongoing monitoring for new plant pest establishment in the area and subsequent removal*
  - *Ongoing animal pest control – in particular possum and cat control*
  - *Containment of domestic cats and dogs at night*
  - *Monitoring*

6.49 It is concluded by Mr Hamilton that the ecological effects of the proposal are positive. While Mr Wright has confirmed the adequacy of Mr Hamilton's assessment and agreed with Mr Hamilton's conclusion with regard to ecological values of forest remnants 1 and 2, he comments on the matters relating to dog, cat and mustelid restrictions, pest management, wetland and riparian areas, and covenant areas (refer to Mr Wright's correspondence dated 28 February 2010 provided at Attachment 1 in Part A). Mr Wright has provided further comments in his correspondence dated 25 June 2010 with regard to the banning of cats and mustelids and the hard built area setbacks around conservation covenants:

> *The applicants have noted that the risk to domestic cats associated with the proposed ongoing pest-trapping programme will act as a proxy control measure. While I agree that this will work as an encouragement to property owners to restrain their cats, the long-term outcome is dependant on the level and continuity of the trapping programme.*
>
> *The legislation restricting the keeping of mustelids has a grandfather clause, allowing the retention of any pets existing as of 2002 (when the legislation was enacted). As ferrets in captivity have a life expectancy of 8 – 14 years, there is the potential for some pets to still be alive. Therefore to avoid any risk, the banning of mustelids should be included as a consent condition.*
>
> ...
>
> *The reasoning for this (the hard built area setbacks around conservation covenants) is twofold:*
>
> *a) To reduce the risk of changes to the forest hydrological and nutrient cycle. The construction of any hard surface (e.g. buildings, paving etc…) around the root system of the forest will have an impact on the flow of water and associated nutrients to those trees roots, thus potentially affecting the forest structure (e.g. drying out some areas and concentrating higher levels of water flow into others).*
>
> *b) To avoid the compaction of the substrate around the root system. This can have a negative affect to tree health, and in extreme cases, can kill trees.*
>
> *In my opinion, a ten metre setback is the bare minimum (e.g. as a rule of thumb, the spread of a trees roots are equal to the trees height, therefore a fifteen metre tree on the edge of these old-growth remnants will have at least a fifteen metre root spread outside of the remnant edge).*

6.50 Mr Wright agreed that the proposal which includes the protection of five bush areas with a total area of 4.2ha and the restoration of a wetland and riparian area of approximately 1ha in size with ongoing management could have positive ecological effects. However, whether these positive ecological effects could justify the additional allotments proposed requires consideration. Mr Wright has provided the following comment regarding the ecological value and benefits of the proposed protection areas:

> *Overall, it is my opinion that the applicant has offered a relatively low level of ecological benefit within the application, given the high number of lots sought. Protecting the only the small existing forest remnants and offering some (limited) wetland/riparian enhancement.*
>
> *It is also my opinion that the Environmental Benefit offered by the covenanting of the two forest remnants (Remnants 1 & 2 on the Scheme Plan/Ecological Assessment Report) would be worthy of the allocation of no more than two additional Environmental Benefit lots.*

6.51 The amended application dated 2nd July 2010 from Resource Management and Assessment Ltd was forwared to Mr Wright for consideration and response (Refer Attachment 11 for a copy of his response). Mr Wright believes the reduction in lots will reduce the potential impact to the ecological values of the property, and particularly notes the removal of lots 49, 50 and 51 in regard to the benefit of reducing the level of fragmentation in the forest covenant areas. He considers this will increase the potential connectivity to surrounding forest, as will the removal of lot 15. His overall opinion, following the amended plan, is that the additional ecological mitigation measures do potentially add significant ecological benefit… 'however without knowing the actual level of wetland/riparian protection/enhancement or proposed supplementary native planting of the forest covenant areas it is difficult to quantify these ecological benefits.'

Stone Walls

6.52 The applicant seeks to remove up to 69m of stone walls including 17m along the Cemetery Road boundary and 52m within the subject site to provide for access. This does not comply with either Rule 73.3.13 or Rule 38.3.8 of the District Plan and requires consideration against the matters of discretion as outlined in paragraph 3.5 of this report.

6.53 As summarised in the information provided by Mr Cumming dated 19 February 2010 (included in Part C), the following mitigation measures relating to the stone walls are proposed:

- *Constructing two 8m long wing walls along the sides of the new road intersecting with Cemetery Road (total 16m wall construction)*
- *Reinstating the wall at the current Cemetery Road entranceway (5m wall reinstatement)*
- *Finishing the end walls of the internal wall breaches to the industry standard*
- *Repairing areas of minor damage in existing walls*
- *Removing stock to prevent future damage to the walls*
- *The wing walls, entranceway reconstruction and end wall finishing will be built to industry standards by an experienced stone mason*

6.54 An Archaeological Assessment by Rod Clough of Clough & Associated Ltd dated July 2008 and supplementary assessment dated 18 February 2010 have been provided in support of the application. It is concluded by Mr Clough that:

The current proposal requires one c.17m opening of the dry stone walling along Maunu Rd. This opening will be mitigated by the construction of two 8m long wing walls along the sides of the new road and by reinstating the wall at the current entranceway, so there will be little net change to the overall visual effects of the proposal.

The remaining changes to stone walling are internal to the property and will not be visible to the public. The end wall of each opening will be finished to the industry standard by an experienced stonemason.

Overall, I consider that the effects on the stone walling are acceptable from a heritage perspective, but suggest that the applicant makes a photographic record of the walls prior to any development occurring and provides it to the Whangarei Library or Museum.

6.55 Following the receipt of HPT's original submission in opposition (only relates to the effects on stone walls), the applicant has liaised with Mr Pickard of HPT and reached an agreement (refer to Mr Cumming's letter dated 17 May 2010 provided at Attachment 8 in Part A). On top of the mitigation measures as outlined above, the applicant proposes to legally prevent any further breaches of the stretches of the stone wall in question (along the Cemetery Road boundary) by registering heritage covenants on the title of proposed Lots 2 and 3.

6.56 On 9 June 2010, Mr Pickard confirmed that HPT withdraw their opposition and provided the following comments:

Our aim is to maintain the heritage values of the wall fronting Cemetery Road for as long as possible, and covenants are the most appropriate way to allow for their retention and for ongoing maintenance. As such the intentions in the letter (by Mr Cumming dated 17 May 2010) are welcomed.

6.57 No other submitters have raised concerns with regard to the removal of stone walls nor has Mr Cocker raised any concerns in terms of landscape and visual effects relating this matter.

6.58 Based on the comments provided by Mr Clough and Mr Pickard and the mitigation measures proposed, it is considered that the proposed removal of stone walls will only result in adverse effects that are no more than minor.

Maori and Archaeological Values

6.59 As discussed in Section 2 of this report, the subject site is located immediately to the north-west of a Site of Significant to Maori (Maunu 2D2 Block) ref: 14 under the District Plan being Maori Reserve (Wahi tapu), and there are several recorded archaeological sites ref: Q07/374, Q37/412, Q07/375 and Q07/377 in proximity of the site.

6.60 An Assessment of Effects on Tangata Whenua by the Toe Toe Otaika Working Group (Hauauru Trust) dated 28 August 2008 has been provided in support of the application. The assessment has documented the consultation with Tangata Whenua and concluded that:

There were no 'site specific' issues of cultural and spiritual significance identified during the consultation process that the proposed development would impact adversely upon.

There was no objection to the development on the basis that there is a strong acknowledgement of the relationship between Tangata Whenua and the Gunson family who are recognised as one of the main pioneering families of Whangarei.

The main cultural and spiritual views raised throughout the entire consultation process were directly related to the adjacent Maunu 2D2 block and not the proposed area of development.

The key area of concern for Tangata Whenua was the flow and direction of the wastewater and storm water to Mokoparu stream from Maunu A1 block on to Maunu 2D2 block.

6.61 The Hauauru Trust has made the following recommendations to address the potential effects on Maori values. Mr Cumming has provided comments to confirm and clarify the measures proposed by the applicant to address these recommendations (refer to Mr Cumming's email dated 9 June 2010 provided at Attachment 8 in Part A).

The following recommendation is to protect the water flow and quality of the Mokoparu stream to mitigate any negative impact on the burial caves, grounds and cultivations located on the adjacent Maunu 2D2 Block.

THAT the proposed standalone wastewater treatment and disposal units are made specific requirement of the development.

THAT the procedures for archaeological finds at 131 Cemetery Rd Maunu, appendaged to this document be adhered to in the event of archaeological finds.

6.62 In terms of archaeological values, Mr Clough has undertaken an archaeological assessment and provided a list of recommendations to address the potential effects on archaeological values (refer to page 14 of Mr Clough's assessment in Attachment 10 of the application). It is concluded by Mr Clough that:

There should be no major constraints on the proposed subdivision on archaeological grounds, since no archaeological sites are known to be present with the exception of the dry stone walls, which are to be (largely) retained. It is considered unlikely that any unrecorded subsurface archaeological sites will be exposed during development.

6.63 Mr Pickard of HPT concurred with the conclusion reached by Mr Clough and recommended that Mr Clough's recommendations shall become requirements under conditions of consent. No other submitters or local Iwi have raised concerns with regard to Maori and heritage values.

6.64 Mr McNeill and Ms Moss (submitters) have raised concerns regarding the potential trespass into the adjoining Maori land (Maunu 2D2 Block). Council's Maori Engagement Officer, Andre Hemara has also raised concerns regarding the protection of Maunu 2D2 Block. As discussed above, the applicant has proposed measures to address the concerns of Tangata Whenua according to the recommendations by the Hauauru Trust (refer to Mr Cumming's email dated 9 June 2010 provided at Attachment 8 in Part A). I concur with Mr Cumming's comment that the matter of trespass is a matter which falls outside the scope of the Resource Management Act 1991.

Hazards and Services

6.65 Mr Murphy has commented on the matters relating to hazards and services, and recommended several conditions of consent to address the effects associated with hazards and services (refer to Mr Murphy's report dated 22 June 2010 provided at Attachment 1 in Part A).

6.66 Several submitters have raised concerns regarding water supply pressure. Mr Murphy has advised that the proposal could have an effect on the existing water supply pressure. However any decreases are likely to be minor in accordance with WDC Environmental Engineering Standards and LTCCP service levels.

Transmission Line and Sub-Transmission Circuits

6.67 The applicant has reached an agreement with both Transpower New Zealand Limited (Transpower) and Northpower Limited (Northpower) which addresses their concerns relating to the maintenance and protection of the transmission line assets and the sub-transmission circuits on the site and in proximity of the site. The agreement between the applicant and Transpower is included in Transpower's submission provided in Part C. The agreement between the applicant and Northpower is attached with the email by Ms Brownie of Northpower date 30 June 2010 provided at Attachment 8 in Part A.

Cumulative Effects

6.68 The definition of effect under the Act as stated in paragraph 7.2 of this report includes *any cumulative effect which arises over time or in conjunction with other effects regardless of scale, intensity, duration or frequency of the effect.* Cumulative effects may result in a receiving environment to become more sensitive, or less capable of absorbing adverse effects over time. For a cumulative effect to be more than minor, it must have breached a threshold, or 'tipped the balance'.

6.69 As discussed in the previous sections of this report, there is a mixed pattern of allotment sizes and densities of built development in the wider area surrounding the site. The majority of the properties surrounding the site are between 1 to 4ha in size with a number of properties being less than 1ha in size. However, the properties in closer proximity surrounding the site are predominantly over 4ha in size. In particular, the area of the site and the adjacent properties to the southeast and southwest are in excess of the 20ha controlled activity standard for subdivision in the Countryside Environment.

6.70 Taking into account this existing environment, the addition of the resulting development, should the application be granted, will add significantly to the extent of non-rural development on Cemetery Road. Conversely, it will represent a significant reduction in the availability of open rural land in the area to sustain rural amenity.

This will see a greater than expected increase in traffic flows on Cemetery Road, and will reduce the extent of rural amenity that currently exists. I consider that the potential cumulative effects on amenity of the proposed subdivision are more than minor when considering the current pattern of development in the area and the lack of mitigation measures to assist the maintenance of the rural character and amenity values currently enjoyed in the area.

6.71 In my opinion, the proposal subdivision would 'tip the balance' in the surrounding area from being a rural area with low intensity of development, low levels of noise and traffic, and green 'unspoiled' landscape with indigenous vegetation, to an area which could potentially be characterised by more intensive residential development with domesticated landscape.

7. Objectives and Policies of the District Plan

7.1 The other test set out in Section 104D of the Act relates to the activity not being contrary to the objectives and policies of the relevant plans. In order for consent to be granted it must be concluded that the proposal will not be contrary to the objectives and policies of the relevant plans.

7.2 The meaning of **contrary** has been defined in the decision of Monowai Properties Ltd v Rodney District Council (A215/03). The court determined that *"a non-complying activity will rarely, if ever, find direct support in the objectives and policies of a Plan, but an absence of support does not equate to the activity being contrary to those provisions. Contrary to in this context means … repugnant to … or … opposed to … the objectives and policies considered as a whole".*

7.3 Sections 8 to 21 of the application included assessment of the proposal against the relevant objectives and policies of the District Plan. The relevant objectives and policies as identified by Mr Cumming are contained within the following chapters of the District Plan. It is concluded by Mr Cumming that the proposal is not contrary to the relevant objectives and policies of the District Plan.

- Chapter 5 Amenity Value
- Chapter 6 Built Form and Development (Plan Change 92)
- Chapter 7 Tangata Whenua
- Chapter 8 Subdivision and Development
- Chapter 11 Riparian and Coastal Margins
- Chapter 12 Water Bodies
- Chapter 13 Heritage Buildings, Sites and Objects
- Chapter 14 Heritage Trees
- Chapter 15 Open Space
- Chapter 16 Landscape
- Chapter 17 Indigenous Vegetation and Habitat
- Chapter 19 Natural Hazards
- Chapter 23 Network Utility Operations

7.4 I have cited the following objectives and policies of the District Plan which, in my opinion, required further consideration.

Chapter 5 Amenity Values

Objective 5.3.1 – The characteristic amenity values of each Environment are maintained, and where appropriate enhanced.

Objective 5.3.5 – The actual and potential effects of Subdivision, use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development, and levels of amenity in the surrounding environment.

Policy 5.4.1 – Effects on the Local Environment

To ensure that activities do not produce, beyond the boundaries of the site, adverse effects that are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless such effects are authorised by a district plan, a designation, a resource consent, or otherwise. The following effects should be given particular consideration in this respect:

- *Noise and effects;*
- *Shading;*
- *Glare;*
- *Light spill;*
- *Dust;*
- *Smoke;*
- *Odour;*
- *Vibration;*
- *Spray drift;*
- *Visual amenity.*

Where internalisation of effects cannot be wholly achieved, the Council will consider a Best Practicable Option approach.

Policy 5.4.5 – Countryside Environments

To ensure rural amenity values in the Countryside Environments are protected from subdivision, use or development that is sporadic or otherwise inappropriate in character, intensity, scale or location.

Policy 5.4.7 – Intensity and Design of Subdivision and Development

To encourage that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be had to:

- *The layout and intensity of subdivision;*
- *The location, design and sitting of buildings and structures except where such buildings and structures provide a specific service for the surrounding environment. In the latter case any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment.*

Chapter 8 Subdivision and Development

Objective 8.3.2 – Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.

Objective 8.3.3 – Subdivision and development that ensures consolidated development in appropriate locations and prevents sporadic subdivision and ribbon development.

Objective 8.3.7 – Subdivision and development that provides for comprehensive development of land with a range of allotment sizes and is appropriate to the character of the Environment in which it is located.

Policy 8.4.2 – Consolidated Development

To further develop, within existing built up areas, so as to avoid sporadic subdivision and ribbon development, particularly in rural areas and along the coast. Any development adjacent to existing built-up areas must be confined to appropriate locations and otherwise be consistent with the policy framework of this Plan.

Policy 8.4.3 – Density of Development

To ensure that subdivision and development results in a pattern and a density of land use which reflects flexibility in allotment size and is of a density appropriate to the locality.

Policy 8.4.4 – Cumulative Effects

To ensure that the cumulative effects of on-going subdivision and development do not compromise the objectives and policies of this Plan, in particular those objectives and policies relating to reducing conflicts between incompatible landuse activities, the consolidated and orderly development of land and the density of development.

Policy 8.4.18 – Consolidated Rural-Residential Development

To direct rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas.

Plan Change 92 Built Form and Development

Proposed Objective 6.4.2 – Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment.

Proposed Policy 6.5.2 – Consolidated Development

To consolidate urban development by:

(i) Focusing residential development on those urban areas with demand, where the landscape and natural character have already been compromised.

(ii) Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast.

(iii) Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas.

(iv) Promoting clustered, mixed use activity that focus on existing urban and coastal centres.

(v) Retaining and encouraging a distinctive sense of place.

Proposed Policy 6.5.9 – Rural-Urban Interface

(i) To carefully manage the interface between rural areas and adjacent residential or Urban Transition Environments and between rural land and the land managed for conservation purposes.

(ii) To provide for the establishment of Urban Transitional living, particularly where normal urban residential densities would be inappropriate.

7.5 The objectives and policies outlined above aim to balance the demand for residential development with the need to maintain and where possible enhance the rural amenity as a unique and valued character of the Countryside Environment within the district. Emphasis is placed on appropriate control, location and design of subdivision and development, and a density and intensity of development that is compatible with the surrounding environment. As part of this process, restriction on density (i.e. minimum allotment sizes requirement) is a common tool for managing rural amenity.

7.6 As detailed above, the proposed subdivision is a non-complying activity in the Countryside Environment. It does not meet the 20ha minimum net site area standard for a controlled activity and the 4ha average net site area standard for a discretionary activity. The explanation for the allotment area rule in the Countryside Environment (as stated in Section 73.4 of the District Plan) is related to and in keeping with the objective and policies outlined above:

> *Subdivision that does not comply with a standard for a controlled or discretionary activity is non-complying activity. Consequently, for any such proposal to be assessed as acceptable, the applicant would first need to show that the proposed subdivision would have no more than minor effects on the overall level of density appropriate to the Environment in question, and/or was consistent with the density of development in the immediate area surrounding the proposal. In other words, the proposed subdivision would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes.*

7.7 In order to reach a conclusion as to whether the proposal is or is not contrary to the objectives and policies outlined above, I consider the issues below:

1) With regard to Objective 5.3.1, Policies 5.4.1 and 5.4.5, whether the location and intensity the proposed subdivision maintains and possibly enhances the character and amenity values of the surrounding environment.

2) With regard to Objectives 5.3.5, 8.3.2, 8.3.7, Policies 5.4.7, 8.4.3, 8.4.4 and Proposed Policy 6.5.9, whether the density of the proposed subdivision is compatible with:

- The existing patterns of development in the surrounding environment;
- The identified future patterns of development in the surrounding environment; and
- The Countryside Environment.

3) With regard to Objective 8.3.3, Policies 8.4.2, 8.4.18, Proposed Objective 6.4.2 and Proposed Policy 6.5.2 whether the location, layout and intensity of the proposed subdivision represents consolidated development within existing built up areas rather than sporadic subdivision and ribbon development.

Maintenance and enhancement of the character and amenity values

7.8 The rural character and amenity of the surrounding environment has been discussed in previous sections of this report. The site and the surrounding environment are characterised by features such as low intensity of development, low levels of noise and traffic, and green 'unspoiled' landscape with indigenous vegetation; these features contribute to the rural amenity currently enjoyed in the area.

7.9 While landscape enhancement plantings, bush protection (totalling 4.2ha in area) and wetland restoration (approximately 1ha in area) are proposed, the offsite amenity effects in terms of noise and volume of traffic associated with the 41 additional residential allotments are not readily able to be avoided or mitigated.

7.10 Given the location and intensity of development proposed and the lack of mitigation measures to assist the maintenance of the rural character of the site and the surrounding environment, the proposed subdivision would lead to further intensification and fragmentation in the Countryside Environment and potentially result in a negative change to the rural amenity values of the surrounding environment.

7.11 The issue is clearly explained in the explanation and reasons of Policy 5.4.5:

> *The rural environment possesses distinctive amenity values that are enjoyed by both rural and non-rural dwellers. However, conflict over amenity values often occurs when new residences locate in the rural environment. This conflict includes both the effects of newly locating activities on existing activities and the effects of existing activities on newly locating activities (reverse sensitivity). These issues need to be managed both to avoid conflict and protect rural amenity values.*

7.12 I consider that the proposed subdivision would be contrary to Objective 5.3.1, Policies 5.4.1 and 5.4.5.

Appropriateness of the density proposed

7.13 The proposed subdivision seeks to create 41 additional residential allotments of 2000m² in size with a 47.9ha shared ownership allotment, achieving an average density of 1 residential allotment per hectare.

7.14 As discussed in the previous sections of this report, there is a mixed pattern of allotment sizes and densities of built development in the area surrounding the site. Therefore, I have undertaken a cadastral analysis and specifically considered the allotment sizes within a 800m radius of the subject site. A table which shows the legal description and size of the allotments within a 800m radius of the site and a map which shows the location of these allotments is provided at **Attachment 9** in Part A.

7.15 While the majority of the allotment sizes within a 800m radius of the site are less than 2ha in size with a number of properties being less than 1ha in size, there are only two properties being 2000m² or smaller in size (number 40 and 45 as shown on the map provided at Attachment 9 in Part A). In addition, the average allotment size within a 800m radius of the site is 7.1184ha.

7.16 In terms of the identified future patterns of development in the surrounding environment, Council has initiated a plan change, reference Plan Change 93, which seeks to establish and rename the rural residential areas within the District (i.e. areas situated on the fringes between (urban) Living and (rural) Countryside) to reflect their transitional role between urban and rural environment. These areas have been identified as the Urban Transition Environment. A map showing the locality of the proposed Urban Transition Environment in Maunu is provided at **Attachment 10** in Part A. The site is not located within the area proposed to be rezoned as Urban Transition Environment.

7.17 In addition, the site is not shown within the Maunu and Hora Hora Structure Plan as being proposed for any form of future rezoning, enabling a greater level of development. On the contrary, it is specifically proposed in the Structure Plan that the Countryside zoning on Cemetery Road be retained.

7.18 The explanations of the objectives and policies concerning the density of subdivision and development and cumulative effects highlight the following:

- *Ongoing and subsequent subdivision and development of land, can potentially result in cumulative adverse effects as the volume of development exceeds the carrying capacity of the environment to absorb these effects. Higher density subdivision can potentially result in conflict between existing and potential land uses.*

- *The density of development impacts on natural, cultural (including tangata whenua) and amenity values, and on the efficient and orderly provision of infrastructure and services. It is important that this scale is in proportion to existing development or be at such a level that it does not detrimentally affect the existing character, amenity, natural processes or ecological values of an area, and does not preclude efficient and orderly provision of infrastructure and services. It is also important in the rural areas, where existing and future rural activities can be adversely affected by more intense development.*

- *Ongoing or subsequent subdivision and development of land can result in cumulative effects on the values of an area. Where land has previously been subdivided, any further applications to subdivide must be carefully assessed so as to ensure that the overall density of an area does not exceed the environmental capacity of the land to absorb the effects of potential development.*

7.19 I consider that the proposed subdivision would increase the existing density of development in the area and result in cumulative effects that are more than minor by introducing more intensive residential development in a rural area which is considered potentially sensitive to change in terms of further subdivision.

7.20 I consider that the proposed subdivision is inconsistent with Objectives 8.3.2, Policies 5.4.7, 8.4.3 and Proposed Policy 6.5.9, and would be contrary to Objectives 5.3.5, 8.3.7 and Policy 8.4.4.

Consolidated development or sporadic subdivision

7.21 The meaning of **consolidated** as defined in the Oxford Dictionary is to make (something) stronger or more solid or to combine (a number of things) into a single more effective or coherent whole. The word **sporadic** as defined in the Oxford Dictionary means (something) occurring at irregular intervals or only in a few places; scattered or isolated.

7.22 While I agree with Mr Cumming that the proposed subdivision, with no frontage to Cemetery Road, is not a ribbon development, I do not consider the proposed subdivision represents consolidated development within an existing built up area. On the contrary, the proposed subdivision is outside an existing settlement of small rural-residential properties and is located in an area characterised by features such as low intensity of development, low levels of noise and traffic, and green 'unspoiled' landscape with indigenous vegetation.

7.23 The proposed subdivision is relatively isolated from the small rural-residential properties in the area and is bounded by medium to large sized rural holdings (except the Huys property which adjoins to the north-western corner of the site) ranging from 5.966ha to 113.7028ha. I consider that the proposed subdivision represents inappropriate sporadic subdivision of a primarily residential nature in a rural area.

7.24 As stated in the explanation of Policy 8.4.2, sporadic subdivision is discouraged in the rural areas in order to retain the rural and/or natural character, and amenity values of these areas. I consider that the proposed subdivision would represent sporadic subdivision in a rural area and potentially result in a negative change to the rural character and amenity values currently enjoyed in the area.

7.25 I consider that the proposed subdivision would be contrary to Objectives 8.3.3, Proposed Objective 6.4.2, Policies 8.4.2, 8.4.18 and Proposed Policy 6.5.2.

General Comment in relation to Objectives and Policies

7.26 It is acknowledged that consideration should be given to positive aspects of the proposal and how these aspects relate to any objectives and policies in the Plan.

7.27 Policy 8.4.9 'Protection of Features' states "To secure permanent protection and/or enhancement of: stands of indigenous vegetation;…areas of appropriately designed indigenous re-vegetation or enhancement…". The proposal includes areas of bush, wetland, and riparian margin which are to be protected in perpetuity, and as such is considered to be consistent with Policy 8.4.9.

7.28 Policy 19.4.1 'Natural Hazards Effects' requires consideration that subdivision, use and development do not increase the risk from, occurrence of, or the adverse effects of natural hazards. The subject site is not shown as flood susceptible in the District Planning Maps and as such is not considered to increase the risk to buildings on the site nor beyond the site.

8. Other Matters

8.1 In terms of Section 104(1)(c) of the Act, the following matters are considered relevant in making an appropriate consideration of this application:

Precedent Effect

8.2 The granting of a consent does not constitute a legal precedent in the strict sense and each application is to be determined on its merits. However, the matter of precedent in a general sense can be relevant, particularly where applications seek to infringe minimums or maximums (i.e. restrictions on the density for subdivision) detailed within a district plan.

8.3 In such situations it is legitimate for the consent authority to consider the precedent effect of granting an application, especially where it is likely that other similar applications will be made, with the expectation that consent will be granted as a matter of uniformity and fairness, with precedent effect described as a concern about plan integrity and consistent administration of the plan. Several submitters have raised concerns regarding precedent effect and District Plan integrity.

8.4 As a non-complying activity the proposal may only be granted if at least one of two 'gateway' tests set out in Section 104D of the Act is satisfied: either that the adverse effects of the proposal on the environment will be minor; or the proposal will not be contrary to the objectives or policies of the relevant plans. As discussed in the pervious sections of this report, I consider that the proposal would have effects on rural character and amenity values, and cumulative effects that are more than minor, and would be contrary to Objectives 5.3.1, 5.3.5, 8.3.3, 8.3.7, Policies 5.4.1, 5.4.5, 8.4.2, 8.4.4, 8.4.18, Proposed Objective 6.4.2 and Proposed Policy 6.5.2 of the District Plan and Plan Change 92. In my view, the proposal does not meet either of the 'gateway' tests.

8.5 The main concern in terms of precedent effect relate to whether the application demonstrates unusual qualities to distinguish the application from others to warrant its approval under such circumstances. Mr Cumming has provided a list of reasons to support that the application by Pipiwai Investments Ltd is significantly distinguished from other applications that may arise in the Countryside Environment (refer to the information provided by Mr Cumming dated 19 February 2010 included in Part C). The reasons offered are as follows, with my comments following each point:

- *The development is farmpark style*

  This of itself does not distinguish the site from any others, rather it is the mechanism being proposed to undertake the subdivision.

- *The development is located in an appropriate receiving environment being a secluded valley in an area of rural residential properties*

  Both Ms Hawthorn and Mr Cocker has confirmed that the development is reasonably contained in terms of visibility with landscape and visual effects being no more than minor, subject to the recommended mitigation measures being fully implemented. This may be considered as a distinguishing feature given the size of the property.

  However, it is debatable as to whether the development is located within an area of rural residential properties. I have previously expressed the view that the development is located within a rural area in the paragraphs under 'Rural Character and Amenity Values' section of this report. No evidence has been presented to suggest that the specific features of this site which provide for its relative seclusion are such that it can be readily distinguished from other sites.

- *Versatile soils and farmland are retained while providing for rural residential development on the same site*

  This of itself does not distinguish the site from any others, rather it is the manner in which the subdivision is proposed to undertaken on the site. It is not unusual for rural subdivisions to be justified by retaining productive land in one title while creating additional lots on areas that are deemed unusable for production. As an aside, it is noted that the application places some weight on the site not being readily viable as a farming unit nor containing high class soils.

- *Landscapes, open space, biodiversity including wetlands and significant native forest, amenity and heritage values are protected and managed (with an ongoing funding stream for that management)*

  Based on advice from Mr Cocker and Mr Wright, the values associated with these features are not of such significance that they should represent unique circumstances. In particular, while Mr Wright agreed that the proposed bush protection and wetland restoration with ongoing management could have positive ecological effects, he considered that *the applicant has offered a relatively low level of ecological benefit within the application, given the high number of lots sought. Protecting the only the small existing forest remnants and offering some (limited) wetland/riparian enhancement.*

- *There are fewer adverse effects than an alternative conventional 4 hectare average subdivision that would have been a discretionary activity*

  A conventional 4 hectare subdivision approved as discretionary activity could lead to potentially 14 allotments. As a discretionary activity, due consideration would need to be given to mitigation measures such as those offered as part of the current application. It is not clear as to how the current application providing for 41 lots could possibly lead to lesser effects than a discretionary level of development.

- *There are no significant adverse effects on rural amenity*

  The off site amenity effects associated with 41 additional residential allotments in the existing environment are considered to be more than minor.

- *The exclusion of stock reduces the nutrient loading on the land and enhances the protection of water quality in the waterways*

  It is not unusual as part of discretionary or non-complying subdivisions to require some form of mitigation in the form of covenants and fencing of sensitive areas for the purpose of achieving compliance with the Environmental Benefit rule under the District Plan.

- *The effects, e.g. stormwater runoff, of both the rural residential and the productive uses can be sustainably managed*

  In addressing Part II of the Resource Management Act, Council ultimately cannot consider granting consent to any application unless it is deemed to meet the sustainable management directive of the Act. That is a fundamental test as to whether consent should be granted, not a feature of development that warrants consideration in terms of precedent matters.

8.6 It is my opinion that possibly the only unusual or distinguishing qualities of the site and its proposal are that it is able to connect to reticulated water supply despite being a rural property, and that the extent of development is visually well-hidden from public views.

8.7 I therefore consider that approving the proposal would create a potential precedent effect to a level which is more than minor because the application does not demonstrate sufficient unusual or distinguishing qualities to warrant its approval to create 41 additional residential allotments of 2000m² in size in the Countryside Environment.

9. Part 2 of the Resource Management Act 1991

9.1 Part 2 of the Resource Management Act 1991 details the purpose and principles of the Act and as such forms the backbone for all the documents and processes that are prepared under the Act.

9.2 Section 5 of the Act states:

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act sustainable management means managing the use, development and protection of natural and physical resources, in a way or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

9.3 The provisions of Section 5 are further strengthened by Section 6 which recognises seven matters of national importance in achieving the purposes of the Act. Section 7 sets out a list of other matters to which particular regard must be had. In particular, the following matters as outlined in Section 7 are considered relevant to this application:

- *The efficient use and development of natural and physical resources (7(b))*
- *The maintenance and enhancement of amenity values (7(c))*
- *Maintenance and enhancement of the quality of the environment (7(f))*
- *Any finite characteristics of natural and physical resources (7(g))*

9.4 As discussed in the previous sections of this report, the proposed subdivision would lead to further intensification and fragmentation in the Countryside Environment and have effects on rural character and amenity values, and cumulative effects that are more than minor. It is because of the location and intensity of development proposed – 41 additional residential allotments of 2000m² in size in a rural area and the lack of mitigation measures to assist the maintenance of the rural character of the site and the surrounding environment.

9.5 I therefore consider that the proposal would not be consistent with the relevant matters outlined in Section 7 of the Act because it would not maintenance and enhance the amenity values, the quality of environment, nor the finite characteristics of the surrounding rural environment.

9.6 Section 8 of the Act requires Council to take into account the principles of the Treaty of Waitangi. The applicant has consulted with Tangata Whenua and An Assessment of Effects on Tangata Whenua by the Toe Toe Otaika Working Group (Hauauru Trust) dated 28 August 2008 has been provided in support of the application and taken into account in the assessment of the application. Local Iwi including Te Taumata o Te Parawhau, Ngati Kahu O Torongare me Te Parawhau Hapu Trust and Hauauru Turst were served a copy of the application although no submissions from local Iwi were received. It is therefore considered that through the course of processing this application, regard was had for the Treaty of Waitangi.

10. Conclusion

10.1 Pipiwai Investments Ltd seeks subdivision and landuse consent for the following:

- To undertake a two-stage subdivision of three existing titles in the Countryside Environment creating 41 residential allotments with a minimum net site area of 2000m², one 47.9ha shared ownership allotment with proposed covenanted bush areas, and one road to vest.
- To remove up to 69m of stone walls including 17m along the Cemetery Road boundary and 52m within the subject site to provide for access.

10.2 Overall, the application is considered to be a non-complying activity requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area and stone walls.

10.3 Pursuant to Section 104D of the Act, the consent authority may grant a non-complying activity resource consent application only if it is satisfied that either the adverse effects of the activity on the environment will be minor, or the activity will not be contrary to the objectives and policies of the relevant plans.

10.4 In considering the matters discussed in Section 6 of this report, it is concluded that the proposal would have effects on rural character and amenity values, and cumulative effects that are more than minor

10.5 In terms of matters discussed in Section 7 of this report, it is concluded that the proposal would be contrary to Objectives 5.3.1, 5.3.5, 8.3.3, 8.3.7, Policies 5.4.1, 5.4.5, 8.4.2, 8.4.4, 8.4.18, Proposed Objective 6.4.2 and Proposed Policy 6.5.2 of the District Plan and Plan Change 92

10.6 In terms of the matters discussed in Section 8 of this report, it is concluded that the proposal would create a potential precedent effect to a level which is more than minor because the application does not demonstrate unusual qualities to warrant its approval to create 41 additional residential allotments of 2000m² in size in the Countryside Environment. Therefore, the granting of the proposal would potentially undermine the integrity and consistent administration of the District Plan.

10.7 In terms of the matters discussed in Section 9 of this report, it is concluded that the proposal would not be consistent with the relevant matters outlined in Section 7 of the Act because it would not maintenance and enhance the amenity values, the quality of environment, nor the finite characteristics of the surrounding rural environment.

10.8 Having regard to the above considerations, I conclude that the proposal would have adverse effects on the environment that are more than minor and would be contrary to some of the objective and policies of the District Plan. Accordingly the proposal does not satisfy the statutory tests as set out in Section 104D of the Act. I therefore recommend that this application be declined.

10.9 It is noted that the applicant has had discussions with Council during the processing of this consent. Those discussions have included the suggestion by staff of reducing the intensity of the development to a level more in keeping with the Countryside Environment provisions in the District Plan. In my opinion, a subdivision meeting the discretionary standards could be more in keeping with the existing pattern and intensity of development in the area, and may better provide for protection of the existing rural amenity. In any event, the applicant has chosen not to amend the application at this time to reduce the intensity of development to this extent.

10.10 While I acknowledge that this application involves two separate consents – a subdivision consent for a two-stage subdivision and a landuse consent for the removal of stone walls, I consider that the removal of stone walls would not be required if the proposed subdivision were not to be proceed given that the applicant seeks to remove the stone walls only to provide access for the proposed allotments. The recommendation is based on the entirety of the proposal.

10.11 Nevertheless both activities have been taken into account in the above assessment and considerations. It is concluded the proposal to remove up to 69m of stone walls including 17m along the Cemetery Road boundary and 52m within the subject site to provide for access, with the proposed mitigation measure were to be fully implemented, will have no more than minor adverse effects with regard to heritage and amenity values. The proposal to remove the stone walls alone would not be contrary to the objectives and policies of the District Plan.

10.12 The applicant also seeks consent for cancellation of a right of way easement and extension of time relating to the consent lapsing date. Should the consent the granted, I recommend these matters be approved accordantly because:

- All the proposed lots will gain vehicle access off Cemetery Road via a 3320m² proposed road to vest and the internal driveways within the site. The Right of Way Easement EI 7225417.3 shown as A in favour of Lot 2 DP 382892 and Part Maunu 1A Block Parua Survey District across Lot 1 on DP 382892 is therefore no longer required.

- Given the scale of the proposal and the design and work involved, the extension of time relating to the consent lapsing date sought by the applicant; being a total of ten years after the date of commencement of consent is considered appropriate.

Recommendation

Having considered the application against the relevant provisions of the Act and having taken into account matters raised in the submissions received, the reporting planner recommends that the Whangarei District Council **DECLINED** the application by Pipiwai Investments Ltd to undertake a two-stage subdivision of three existing titles in the Countryside Environment creating 41 residential allotments with a minimum net site area of 2000m², one 47.9ha shared ownership allotment with proposed covenanted bush areas, and one road to vest; and to remove up to 69m of stone walls including 17m along the Cemetery Road boundary and 52m within the subject site to provide for access.

Reasons for the Recommendation:

1. The adverse effects of the proposal on the environment in terms of rural character and amenity values, and cumulative effects would be more than minor given the matters discussed in Section 6 of this report.

2. The proposal would be contrary to Objectives 5.3.1, 5.3.5, 8.3.3, 8.3.7, Policies 5.4.1, 5.4.5, 8.4.2, 8.4.4, 8.4.18, Proposed Objective 6.4.2 and Proposed Policy 6.5.2 of the District Plan and Plan Change 92, given the matters discussed in Sections 6 and 7 of this report.

3. The proposal does not satisfy the statutory tests as set out in Section 104D of the Act.

4. The granting of the proposal would potentially undermine the integrity and consistent administration of the District Plan, given the matters discussed in Section 8 of this report.

5. The proposal would not be consistent with the relevant matters outlined in Section 6 of the Act, given the matters discussed in Sections 6, 7 and 9 of this report.

Advice Notes

1. The consent holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.

2. Section 357B of the Resource Management Act 1991 provides a right of objection in relation to the imposition of additional charges or recovery of costs.

3. Section 120 of the Resource Management Act 1991 provides a right of appeal to this decision. Appeals must be in writing, setting out the reasons for the appeal, and lodged with the Environment Court within 15 working days after the decision has been notified to you. Appellants are also required to ensure that a copy of the notice of appeal is served on all other relevant parties.

Attachments:

1. A letter by Mr Cumming dated 2 July 2010 and an amended concept plan by Beasley & Burgess Surveyors reference C 2478/2 dated 2 July 2010

2. Assessments by Council's Senior Environmental Engineering Officer, Dean Murphy, Council's Consultant Landscape Architect, Simon Cocker, and Council's Consultant Ecologist, David Wright

3. Recommended Conditions

4. Aerial photo and locality map

5. District Plan maps

6. Density map

7. Individual summary of the submissions received and locality map showing the location of the submitters with respect to the subject site

8. Further information received following the receipt of submissions:

    - Written approval from JA Hawken (owners of Lot 2 DP 85459)
    - Meeting minute of 28 April 2008 – discussion regarding ecology and landscape matters
    - A letter by Mr Cumming dated 17 May 2010 – agreement between the applicant and the New Zealand Historic Places Trust (HPT)
    - An email by Tony Pickard of HPT dated 9 June 2010 – withdrawn submission in opposition
    - An email by Mr Cumming dated 9 June 2010 – comments regarding recommendation by Hauauru Turst
    - An email by Sarah Brownie of Northpower Limited dated 30 June 2010 – withdrawn submission in opposition

9. Table showing the legal description and size of the allotments within a 800m radius of the subject site and locality map showing the location of these allotments

10. Locality map showing the Urban Transition Environment in Maunu (Plan Change 93)

11. Comment regarding amended plan from David Wright from Ecological Services, dated 7 July 2010.